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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/991,469	11/21/2001	James G. Wayne	441742001320	3827

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EXAMINER

WOO, JULIAN W

ART UNIT	PAPER NUMBER
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3731

DATE MAILED: 07/19/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/991,469

Applicant(s)

WHAYNE, JAMES G.

Examiner

Julian W. Woo

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 28 April 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 15-27 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 15-20, 24 and 28 is/are rejected.
- 7) ☒ Claim(s) 21-23, 25-27 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this

Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 15-20, 24, and 28 are rejected under 35 U.S.C. 102(e) as being anticipated by Peterson et al. (6,152,937). Peterson et al. disclose, in figures 1, 3, and 14, an anastomosis connector system comprising a fitting with a base (14), a leading segment (18 on one side of 14 as seen in fig. 14) with a rounded-toe configuration, a rear segment (18 on an opposing side of the leading segment as seen in fig. 14), and a hinge zone (between 14 and 18) associated with the base and comprising a torsion member (16), where the fitting or at least the leading and rear segments comprise a plurality of interconnected links or "struts," where the fitting comprises at least one, smooth lateral portion (other "fingers" aside from the leading and rear segments) formed from the interconnected links, and where the area of contact between the interconnected links and the inner surface area of a host vessel (90) is no greater than 35% of the total area of the fitting (i.e., the area contact comprises distal segments or

tips of the "fingers" (18)); where the base and the rear segment are positioned relative to each other, such that an angle between a graft and a host vessel is in a range of about 20 deg. to about 70 deg. (see angle 19 in fig. 3); and where the torsion member faces an inwardly facing surface of the rear segment.

***Allowable Subject Matter***

3. Claims 21-23 and 25-27 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.
4. The following is a statement of reasons for the indication of allowable subject matter: None of the prior art of record, alone or in combination, discloses an anastomosis connector system comprising a fitting having, inter alia, a base, leading and rear segments, and a hinge zone, where the fitting has a length dimension extending from the leading segment to the rear segment and greater than a width dimension transverse to the length dimension, where the fitting has an asymmetrical configuration about the width dimension and a tubular configuration along the length dimension, where the base has an ovalized opening, and where a collar is adapted to interface with the fitting.

***Response to Amendment***

5. Applicant's arguments filed April 28, 2004 have been fully considered but they are not persuasive. With respect to the rejections under 35 U.S.C. 102 based on the reference of Peterson et al.: The Examiner agrees with the Applicant that the fingers (18) of Peterson's connector are "structurally and functionally identical to each other, and may be employed within a vessel in any

orientation with respect to the vessel.” However, the fingers are diametrically opposed to each other in position, and depending upon the orientation of the vessel and upon the sequence of installation of the fingers in a vessel, one finger can be deemed the “leading finger” and the opposing finger can be deemed the “rear finger.” With respect to the arguments regarding the engagement members (16) of Peterson’s connector: The engagement members are not “physically disassociated” from the hinge zone and fingers (18). The connector is manufactured from one piece of material and is inherently associated at the hinge zone. That is, engagement member (16) is a material or structural part of the hinge zone. Moreover, the engagement member has two functions: (1) It used to “pierce a graft,” as the Applicant has stated, and (2) It provides a fulcrum or material support at the hinge zone, and thus, the fingers are enabled to be “torsionally deflected about the hinge zone,” as the claim has stated.

### ***Conclusion***

6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory

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action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

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7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Julian W. Woo whose telephone number is (703) 308-0421. The examiner can normally be reached Mon.-Fri., 7:00 AM to 3:00 PM Eastern Time, alternate Fridays off.

General inquiries relating to the status of this application should be directed to the Group receptionist at (703) 308-0858. The official FAX number is (703) 872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Julian W. Woo  
Primary Examiner

July 14, 2004